

**STATE PUBLIC DEFENDER[493]**

**Notice of Intended Action**

**Proposing rule making related to attorney claims for indigent defense services  
and providing an opportunity for public comment**

The State Public Defender hereby proposes to amend Chapter 12, “Claims for Indigent Defense Services,” Iowa Administrative Code.

*Legal Authority for Rule Making*

This rule making is proposed under the authority provided in Iowa Code section 13B.4(8).

*State or Federal Law Implemented*

This rule making implements, in whole or in part, Iowa Code chapter 13B and chapter 815 as amended by 2022 Iowa Acts, House File 2559, section 21.

*Purpose and Summary*

These proposed amendments update the rules regarding the hourly rate paid to attorneys in cases to which the attorney was appointed after June 30, 2022, to conform to the \$2-per-hour across-the-board increase in attorney fees required by 2022 Iowa Acts, House File 2559, section 21. The proposed amendments also add efficiencies to the claim review process for indigent defense services by amending a provision related to the definition of “date of service.” The proposed language adds the phrase “or sentenced” and strikes the phrase “expiration of the time for appeal from a judgment of conviction.” This proposed change allows for more expedited submission and consideration of attorney fee claims after a sentence has been entered.

The proposed amendments add further efficiencies to the claim review process by eliminating the requirement that the contract attorney submit certain information regarding the number of hours worked on other indigent defense cases on any date when the attorney works between 12 and 16 hours. It is no longer necessary for the attorney to submit the information because it is now collected electronically and is available to the claim reviewer. The proposed amendments update the attorney fee limitations for the number of hours of attorney time that may be claimed for “juvenile court review and other postdispositional hearings” from five hours to eight hours to make the limitation more consistent with the amount of time actually being expended on these types of hearings. Under the existing rules, the attorney must secure court approval to exceed five hours for such hearings. This proposed amendment would save attorney time in seeking court approval and court time in approving and processing applications to exceed the fee limitations in this range, for which applications are routinely allowed. Moreover, the State Public Defender agrees the proposed increased limit of hours is a reasonable amount of time for an attorney to spend on this type of hearing.

The proposed amendments also amend the payment to contract attorneys for automobile expenses from 39 cents to 50 cents per mile to make the mileage rate consistent with the rate state employees receive. The proposed amendments also update the provisions relating to attorney fee claim submissions to amend references to paper claims since all attorney fee claims are now submitted electronically. Finally, the proposed amendments delete several obsolete and outdated references in the rules.

*Fiscal Impact*

Legislative enactment of the \$2-per-hour rate increase is estimated to increase annual costs to the Indigent Defense Fund by approximately \$1,000,000. The increase in the mileage rate is estimated to increase the annual costs to the Indigent Defense Fund by between \$175,000 and \$200,000. Also, the increase in the fee limitation for the juvenile review and postdispositional court hearings is expected

to increase the annual costs to the Indigent Defense Fund in an unknown amount, but the amount is expected to be less than \$100,000 annually and less than \$500,000 over five years.

#### *Jobs Impact*

After analysis and review of this rule making, no impact on jobs has been found.

#### *Waivers*

Any person who believes that the application of the discretionary provisions of this rule making would result in hardship or injustice to that person may petition the State Public Defender for a waiver of the discretionary provisions, if any, pursuant to 493—Chapter 6.

#### *Public Comment*

Any interested person may submit written comments concerning this proposed rule making. Written comments in response to this rule making must be received by the State Public Defender no later than 4:30 p.m. on December 6, 2022. Comments should be directed to:

Kurt Swaim  
Office of State Public Defender  
Lucas State Office Building  
321 East 12th Street  
Des Moines, Iowa 50319  
Email: [kswaim@spd.state.ia.us](mailto:kswaim@spd.state.ia.us)

#### *Public Hearing*

No public hearing is scheduled at this time. As provided in Iowa Code section 17A.4(1)“b,” an oral presentation regarding this rule making may be demanded by 25 interested persons, a governmental subdivision, the Administrative Rules Review Committee, an agency, or an association having 25 or more members.

#### *Review by Administrative Rules Review Committee*

The Administrative Rules Review Committee, a bipartisan legislative committee which oversees rule making by executive branch agencies, may, on its own motion or on written request by any individual or group, review this rule making at its [regular monthly meeting](#) or at a special meeting. The Committee’s meetings are open to the public, and interested persons may be heard as provided in Iowa Code section 17A.8(6).

The following rule-making actions are proposed:

ITEM 1. Amend subrule 12.2(1) as follows:

**12.2(1) Required claim documents.** Court-appointed attorneys shall submit ~~written~~ electronic indigent defense fee claims to the state public defender for review, approval and payment. These claims shall include the following:

*a.* ~~A completed fee claim on a form promulgated by the state public defender.~~ The completion of the appropriate claim type on the online submission website of the state public defender, [spdclaims.iowa.gov](http://spdclaims.iowa.gov).

(1) Adult fee claims, including all trial-level criminal and postconviction relief proceedings, misdemeanor appeals to district court, and applications for discretionary review or applications for interlocutory appeals to the Iowa supreme court, must be submitted on an Adult form. Juvenile fee claims, including petitions on appeal and applications for interlocutory appeals, must be submitted on a Juvenile form. Appellate fee claims, including claims for all criminal and postconviction relief appeals, work performed after the granting of an application for discretionary review or for interlocutory appeal,

and work performed after full briefing is ordered following a juvenile petition on appeal, must be submitted on an Appellate form. For paper claims submitted on or before December 31, 2016, the claim forms may be downloaded from the state public defender website: [spd.iowa.gov](http://spd.iowa.gov).

(2) Claims submitted on or after January 1, 2017, shall be submitted electronically via the online claims website: [spdelaims.iowa.gov](http://spdelaims.iowa.gov). Effective January 1, 2017, any reference in these rules to forms for Adult, Juvenile, or Appellate claims means the respective electronic claims submission page on the online claims website. The state public defender, at the state public defender's sole discretion, may grant limited exceptions to the requirement that claims be submitted electronically via the online claims website.

b. to e. No change.

f. An itemization detailing all work performed on the case for which the attorney seeks compensation and all expenses incurred for which the attorney seeks reimbursement.

(1) and (2) No change.

(3) If another attorney performed any of the work, the itemization shall specify the name of the attorney performing each activity and the named attorney's AT number. It is permissible to use initials representing the name, so long as an explanation is provided as to the full name for each set of initials with the itemization.

(4) and (5) No change.

(6) For paper claims submitted on or before December 31, 2016, the itemization must be typed in at least 10-point type on 8½" × 11" paper. For claims submitted on or after January 1, 2017, the itemization shall be submitted electronically via the Attorney Hours grid on the appropriate claims submission page on the online claims website. Separate electronic attachments of itemizations will not be accepted.

g. No change.

ITEM 2. Amend paragraph **12.2(3)“a”** as follows:

a. *Adult claims.* For adult claims, “date of service” means the date of filing of an order indicating that the case was dismissed or the client was acquitted or sentenced, the date of the expiration of the time for appeal from a judgment of conviction, the date of filing of an order granting a deferred judgment or prosecution, the date of filing of a final order in a postconviction relief case, the date of mistrial, the date on which a warrant was issued for the client, or the date of filing of a court order authorizing the attorney's withdrawal from a case prior to the date of a dismissal, acquittal, sentencing, or mistrial. The filing of a notice of appeal is not a date of service; however, if a notice of appeal is filed after a conviction and the attorney moves to withdraw to have appellate counsel appointed, the date of service is the date of filing of the withdrawal order. If a motion for reconsideration is filed, either the date of filing of the motion or the date on which the court rules on that motion is the date of service. In a probation, parole or contempt proceeding, the date of service is the date of filing of the disposition order or an order granting a continued disposition. In a subsequent review or compliance proceeding under the same appointment, a new date of service is created if the new proceeding generates an order. In a probation revocation proceeding that results in the revocation of a deferred judgment, a judgment of conviction is entered and the date of service is the date of the expiration of the time for appeal judgment. For interim adult claims authorized by subrule 12.3(3) or 12.3(4), the date of service is the last day on which the attorney claimed time on the itemization of services.

ITEM 3. Amend subrule 12.4(1) as follows:

**12.4(1)** Unless the attorney has a contract that provides for a different manner or rate of payment, the following hourly rates shall apply to payment of all claims for cases to which the attorney was appointed after June 30, 1999, and before July 1, 2006:

Attorney time:	Class A felonies	\$60/hour
	Class B felonies	\$55/hour
	All other criminal cases	\$50/hour
	All other cases	\$50/hour
Paralegal time:		\$25/hour

Unless the attorney has a contract that provides for a different manner or rate of payment, the following hourly rates shall apply to payment of all claims for cases to which the attorney was appointed after June 30, 2006, and before July 1, 2007:

Attorney time:	Class A felonies	\$65/hour
	All other criminal cases	\$60/hour
	All other cases	\$55/hour
Paralegal time:		\$25/hour

Unless the attorney has a contract that provides for a different manner or rate of payment, the following hourly rates shall apply to payment of all claims for cases to which the attorney was appointed after June 30, 2007, and before July 1, 2019:

Attorney time:	Class A felonies	\$70/hour
	Class B felonies	\$65/hour
	All other criminal cases	\$60/hour
	All other cases	\$60/hour
Paralegal time:		\$25/hour

Unless the attorney has a contract that provides for a different manner or rate of payment, the following hourly rates shall apply to payment of all claims for cases to which the attorney was appointed after June 30, 2019, and before July 1, 2021:

Attorney time:	Class A felonies	\$73/hour
	Class B felonies	\$68/hour
	All other criminal cases	\$63/hour
	All other cases	\$63/hour
Paralegal time:		\$25/hour

Unless the attorney has a contract that provides for a different manner or rate of payment, the following hourly rates shall apply to payment of all claims for cases to which the attorney was appointed after June 30, 2021, and before July 1, 2022:

Attorney time:	Class A felonies	\$76/hour
	Class B felonies	\$71/hour
	All other criminal cases	\$66/hour
	All other cases	\$66/hour
Paralegal time:		\$25/hour

Unless the attorney has a contract that provides for a different manner or rate of payment, the following hourly rates shall apply to payment of all claims for cases to which the attorney was appointed after June 30, 2022:

<u>Attorney time:</u>	<u>Class A felonies</u>	<u>\$78/hour</u>
	<u>Class B felonies</u>	<u>\$73/hour</u>
	<u>All other criminal cases</u>	<u>\$68/hour</u>
	<u>All other cases</u>	<u>\$68/hour</u>
<u>Paralegal time:</u>		<u>\$25/hour</u>

ITEM 4. Amend subrule 12.5(1) as follows:

**12.5(1) *Maximum daily hours.*** An attorney appointed as counsel or guardian ad litem must not perform services for indigent persons or submit claims to the state public defender for payment for such services for more than 12 hours of the attorney's time in any calendar day except as provided in this subrule.

a. No change.

b. If an attorney performs services for indigent persons and submits claims to the state public defender for payment for such services for more than 12 hours and less than or equal to 16 hours in a calendar day, the attorney shall include with each claim form submitted to the state public defender that claims time for that date, ~~even if the amount claimed on that claim form is less than 12 hours,~~ a letter specifying the total hours worked for indigent persons, ~~any additional time billed to other private clients on that date or certifying that no other time was billed to any other private client,~~ and explaining the need to work more than 12 hours.

c. No change.

ITEM 5. Amend subrule 12.6(2) as follows:

**12.6(2) *Juvenile cases.*** The state public defender establishes attorney fee limitations for the number of hours of attorney time that may be claimed for the following categories of juvenile and adoption cases:

Delinquency (through disposition)	20
Child in need of assistance (CINA) (through disposition)	20
Termination of parental rights (TPR) (through disposition)	30
Juvenile court review and other postdispositional court hearings	<del>5</del> <u>8</u>
Judicial bypass hearings	3
Juvenile commitment hearings	3
Juvenile petition on appeal	10
Motion for further review after petition on appeal	5
Representation of adopting party in adoption following Iowa	5
Code chapter 232, termination of parental rights	

Nothing in this subrule is intended to in any manner diminish, increase, or modify the state public defender's authority to review any and all claims for services as authorized by the Iowa Code.

The fee limitations are applied separately to each case, as that term is defined in rule 493—7.1(13B,815).

For example, in a juvenile proceeding in which the attorney represents a parent whose four children are the subject of four child in need of assistance petitions, if the court handles all four petitions at the same time or the incident that gave rise to the child in need of assistance action is essentially the same for each child, the fee limitation for the attorney representing the parent is 20 hours for all four proceedings, not 20 hours for each one.

For a child in need of assistance case that becomes a termination of parental rights case, the fee limitations shall apply to each case separately. For example, the attorney could claim up to 20 hours for the child in need of assistance case and up to 30 hours for the termination of parental rights case.

In a delinquency case, if the child has multiple petitions alleging delinquency and the court handles the petitions at the same time, the fee limitation for the proceeding is the fee limitation for one delinquency.

In a juvenile case in which a petition on appeal is filed, the appointed trial attorney does not need to obtain a new appointment order to pursue a petition on appeal. The claim, through the filing of a petition on appeal, must be submitted on a Juvenile form. If an appellate court orders full briefing, the attorney fee claim for services subsequent to an order requiring full briefing must be submitted on an Appellate form and is subject to the rules governing appeals.

ITEM 6. Amend paragraph **12.8(1)“a”** as follows:

*a.* Mileage for automobile travel at the rate of ~~39~~ 50 cents per mile. The number of miles driven each day shall be separately itemized on the itemization of services, specifying the date of the travel, the origination and destination locations, the total number of miles traveled that day and, if it is not otherwise clear from the itemization, the purpose of the travel. If the travel is to perform services for multiple clients on the same trip, the mileage must be split proportionally between each client and the itemization must note the manner in which the mileage is split. The total miles traveled for the case shall also be listed on the claim form. Other forms of transportation costs incurred by the attorney may be reimbursed only with prior approval from the state public defender.